

the original and all available copies of the certificate or laboratory report.

(c) Application for an appeal of a laboratory service may be made orally (in person or by telephone), in writing, by e-mail, by facsimile, or by telegraph. If made orally, written confirmation shall be made promptly.

[65 FR 64311, Oct. 26, 2000]

**§ 91.33 When an application for an appeal of a laboratory service may be withdrawn.**

An application for an appeal of a laboratory service may be withdrawn by the applicant at any time before the appealed laboratory service is performed; *Provided*, That, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the laboratory personnel, any travel, telephone, telegraph, or other expenses which have been incurred by the laboratory service in connection with such application.

**§ 91.34 When an appeal of a laboratory service may be refused.**

An application for an appeal of a laboratory service may be refused if:

(a) The reasons for the appealed laboratory service are frivolous or not substantial;

(b) The quality or condition of the commodity product has undergone a material change since the laboratory service covering the commodity product on which the appealed laboratory service is requested;

(c) The lot in question is not, or cannot be made accessible for sampling;

(d) The lot relative to which the appealed laboratory service is requested cannot be positively identified as the lot from which samples were previously drawn and originally analyzed; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

**§ 91.35 Who shall perform an appealed laboratory service.**

An appealed laboratory service shall be performed, whenever possible, by another individual or other individuals than the scientist(s) or the technician(s) that performed the original analytical determination.

**§ 91.36 Appeal laboratory certificate.**

(a) An appeal laboratory certificate shall be issued showing the results of such appealed analysis. This certificate shall supersede the laboratory certificate previously issued for the commodity product involved.

(b) Each appeal laboratory certificate shall clearly identify the number and date of the laboratory certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.

(c) The individual issuing an appeal laboratory certificate shall forward notice of such issuance to such persons as he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.

(d) The provisions in the regulations in this part concerning forms and certificates, issuance of certificates, and retention and disposition of certificates shall apply to appeal laboratory certificates, except that copies of such appeal certificates shall be furnished to all interested parties who received copies of the superseded certificate.

**Subpart I—Fees and Charges**

**§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.**

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR §§ 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all processed commodity products, except flue-cured and burley tobacco, and exclude aflatoxin analyses, citrus juices and certain citrus products. The printed updated schedules of the laboratory testing fees for